

Merrimack Meadows General Partnership

v.

Town of Merrimack

Docket Nos.: 7686-89 and 9867-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 and 1990 assessments of \$5,472,700 (land \$1,665,000; buildings \$3,807,700) on a 12.5-acre lot with an elderly apartment complex (the Property). For the reasons stated below, the appeals for abatement are denied.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to carry this burden.

The Taxpayer argued the assessments were excessive because:

- (1) the Property sold in November, 1992, for \$2,600,000 and is an indication of what has occurred in the market since 1989;
- (2) the Property consists of 96 units and should be valued at approximately \$36,000 per unit or a \$3,456,000 total value;
- (3) the Town's gross leasable area was overstated at 141,120 square feet, while the actual square footage is closer to 105,000; and

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(4) a 1991, income-approach appraisal estimated a \$3,120,000 market value.

The Town argued the assessments were proper because:

(1) the Property was mortgaged in 1987 for \$5,000,000, and in December, 1990 was transferred to Dartmouth Bank by deed in lieu of foreclosure for \$3,900,000;

(2) the Town used the actual potential income based on the number of units not the gross leasable square feet; consequently any discrepancy in the listing of leasable area was irrelevant;

(3) the Taxpayer's 15 percent vacancy rate used in the 1991 income approach was excessive for the 1989 market;

(4) the Taxpayer's assumption of a 16 percent equity yield rate inflated the overall capitalization rate used in the income approach; and

(5) the same methodology was used throughout the Town.

Board's Rulings

Based on the evidence, we find the Taxpayer failed to prove the Property's assessments were disproportional. We also find the Town supported the Property's assessments.

The board denies this appeal because the Taxpayer did not meet its burden of proof. The only evidence submitted by the Taxpayer, other than evidence concerning the physical description of the Property, was an income analysis for 1991. Comparing that income analysis with the Town's income analysis indicated the parties disagreed on the vacancy-collection loss percentage and on the capitalization rate. The board focused its analysis on these two factors and concluded the Taxpayer did not provide

sufficient evidence to support its figures. Specifically, the Taxpayer's

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analysis was as of July, 1991, not the April 1, 1989 and 1990 dates under appeal. Since the market has been quite volatile, it is essential that the capitalization rate be calculated as of a date near the assessment date. This was not done by the Taxpayer, and thus we reject the Taxpayer's capitalization rate. Secondly, the Taxpayer did not present sufficient knowledge of the Property's operations to allow the board to accept the Taxpayer's vacancy-collection percentage.

Finally, the board reviewed the physical-description data submitted by both parties, and we find the Town supported its total square-footage on the Property. Moreover, the Town testified its income analysis was not based on a per-square-foot basis but was based on a per-unit basis. Therefore, even if the Town's total square footage was in error, their analysis would not have been flawed.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Joel Simmons, Representative for the Taxpayer; Jay L. Hodes, Representative for the Town of Merrimack; and Office of the Assessor of Merrimack.

Dated: February 22, 1993

Valerie B. Lanigan, Clerk

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